

**STATE OF MAINE**

**DEPARTMENT OF MARINE RESOURCES**

**IN THE MATTER OF THE APPLICATION OF RON )  
DOANE AND SUSAN WAITE FOR A LIMITED-PURPOSE)  
AQUACULTURE LEASE LOCATED IN BLUE HILL BAY, )  
EAST OF LONG ISLAND, BLUE HILL, HANCOCK )  
COUNTY, MAINE**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND DECISION**

On October 20, 2000, Ron Doane and Susan Waite of Trenton, Maine applied for a limited-purpose (experimental) commercial type, aquaculture lease totaling 1.86 acres in the coastal waters of the State of Maine, located in Blue Hill Bay, east of Long Island, Blue Hill, Hancock County, Maine. The applicant requested the lease for a term of three (3) years for the purpose of cultivating blue mussels (*Mytilus edulis*) using suspended culture techniques.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a limited-purpose lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

A public hearing on this application was held on January 15, 2002 at 6:00 p.m. in Blue Hill. Intervenor status was granted to Don Eley, President of the Friends of Blue Hill Bay; hereafter referred to as "Intervenor".

**Evidence Introduced Concerning the Nature**  
**and Impact of the Proposed Lease**

The applicants, Ron Doane and Susan Waite own and operate their own seafood supply businesses in Trenton. Ron Doane, hereafter referred to as the applicant, provided testimony and answered questions on the application. The applicant testified that he has been in the seafood supply and transport business for many years. He explained that he has a college education and extensive experience building marine life holding systems that he has installed throughout the U.S. for animals such as Dungeness crabs, Jonah crabs and lobster. The applicants' goal is to raise rope cultured mussels to supply their seafood supply business customers, which include local restaurants in Bar Harbor. According to the applicant they receive many requests to supply the Prince Edward Island, Canada cultured mussels and would like to raise the same product locally themselves for better profits and in his opinion, improved product quality compared to wild harvested mussels.

As described in the application, the proposed lease area, 135' x 600', could contain up to three 40' x 40' tandem rafts. The applicant testified, however, that the maximum size he intends to set up would be one 40' x 40' raft with only one tandem raft approximately half that size. The remainder of the proposed lease area would be open. According to the application the rafts would be held in place by 3 – 4 ton granite moorings with 40' of 1-inch chain and 250' of 1½-inch polysteel. The tandem rafts would be connected together using 15' – 20' of 1-inch chain or rope. According to the application, the overall dimensions of a maximum of three rafts plus the spacing between them, on the surface, would be 40' – 160'.

Each raft is floated by three 3' x 40' pontoons connected by a frame of five 40' steel "I" beams. The "I" beams support eighty 3" x 4" wooden crossbeams. The crossbeams support a total of 450 dropper lines. The applicant testified that the dropper lines would be 35' to 40' long and are ½ inch in diameter. If found necessary, each raft may have a 35' – 40' deep, standard 4-6 inch mesh, predator net panel hung on each side of a raft weighted and connected at each

corner, primarily to deter losses to diving ducks. The net panels would be draped across the top of the raft to air dry and remove fouling organisms, about once per year.

The applicant explained that the dropper ropes would be “seeded” with mussels once per year. A machine, contained on a barge owned by Great Eastern Mussel, Inc., would be used to wrap seed mussels onto the dropper using a biodegradable cotton mesh, with 6-inch plastic pegs inserted in the rope every foot to prevent the mussels from sliding off. Seed mussels would be purchased from sources in Maine such as the Tighrope Sea Farm in the Blue Hill salt pond, Evan Young or from Great Eastern Mussel, Inc.

Lobster and recreational fishing, boating and dragging<sup>1</sup> would be allowed within the open areas of the proposed lease. The applicant testified that the main reasons for the site selection were the constant current speed (~8 – 15 cm/sec, due north and south at 75' depths), protection from poaching, to discourage boaters from discharging pollutants nearby, and the lack of sea life found on the bottom, (confirmation on the lack of sea life came from local lobster fishermen who work for the applicants, Department personnel, and from persons who have dragged the area). Also, in the applicant's opinion, the lease is located approximately 1100' distant from the Long Island shore which would be an adequate distance to allow navigation to the island and far enough away from lobster bottom found in more shallow depths nearer the shore of Long Island. The water depth at the proposed lease is approximately 100', which would be prohibitive for transient anchoring by recreational boaters. The applicant testified that at the peak of the lobster-fishing season he has observed no more than 10 lobster-buoys visible in any direction from the proposed lease and none within the proposed lease area. The applicant testified that he foresaw no reason to require any use of the Long Island shoreline for

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<sup>1</sup> Pursuant to 12 M.R.S.A. §6957, dragging is prohibited within 300' of the structures used for aquaculture if that area is marked in accordance with that statute.

purposes associated with the proposed lease. He explained that the proposed site is located on the edge of a deep mud valley that runs due north and south between Long and Bartlett Island as confirmed to him by lobster and dragger fishers familiar with the area.

The applicant testified that he would be willing to accept a condition requested by the Acadia National Park (ANP) acting superintendent to consult with ANP representative(s) on the proposed lease, if it were granted, regarding noise, light, debris management and confirmation that the proposed aquaculture lease activities do not result in commercial use of Long Island, on which the ANP holds a conservation easement. The applicant testified that we would also be willing to reach the same type of agreement with the Town of Blue Hill, which is now a tax-lien landowner on Long Island.

Seeding would generally take place during the months of May or October. Grow out of the mussels would take approximately 12 – 14 months from the time of seeding. Harvesting of the single 40' x 40' raft would be contracted to Great Eastern Mussel, Inc. due to the cost advantage versus the applicant's expense for manual labor, which would be higher. The applicant described the harvest vessel as a self-contained processing plant on an approximate 40' by 80' steel barge, propelled by a small out drive. The single raft harvested by the harvest barge would take place once per year over a several day period. The applicant would also manually harvest approximately 300-500 pounds of mussels for retail customers from the rafts on roughly a bi-weekly basis once the mussels reach marketable size. He explained that he owns a 21' boat (aqua sport), which is moored year round in Pretty Marsh and would be used for maintenance checks approximately on a weekly basis. He also stated that he has many divers who work for his other business and that he could hire divers if needed to inspect or maintain the lines, moorings or other gear. The applicant testified that he could also gain access via the Trenton landing. He testified he did not anticipate any use of the South Blue Hill ramp.

A Department biologist testified regarding observations that he made during a visit at the site on June 7, 2001 and from several other visits to the general area. He testified that he confirmed the location of the proposed corners and distances to the nearest points of land using a survey quality differential global positioning system (dGPS) and software. The proposed lease would be at least 1000' from the nearest shore on Long Island and, according to his report, approximately 1090' from the eastern shore of Long Island at mean low water (MLW) and approximately 1162' distance at mean high water (MHW). The acreage of the proposed lease based on the geodetic positions taken by the biologist would be corrected to 1.87 acres.

The biologist testified that the proposed lease is well flushed and falls within an area classified as "open approved" for the harvest of shellfish, by the Department's Public Health, Water Quality Division.

The biologist explained that his observations of lobster buoys in the area were based on having spent a fair amount of time in the area during the summer months. He testified that he rarely observed buoys out at the 100' depths contour likely due to the soft mud bottom. Buoys are more prevalent between 40' and 80' depths, along the shore of Long Island located well west of the proposed lease site. In several underwater videos taken throughout the area showed very little lobster activity, a few crabs and mainly mud.

According the biologist's report little interference with shore access is expected and no moorings were observed. No recreational fishing was observed. In his opinion, the proposed lease area is unlikely to be used as an anchorage by recreational boaters due to the 100' depths when compared to the 8' – 36' depths located nearer to the shore. There is approximately 980' of navigable water, ranging in depth from 21' – 102' at MLW between Long Island and the proposed lease. Based on the chart in the biologist's report there would be over 6000' of distance to the western shore of Bartlett Island due east across the bay. According to the biologist's report no conflict was anticipated with the nearest Department of Inland Fisheries and Wildlife (IF&W) ¼ mile boundary for an Essential Habitat for Endangered and Threatened Species (bald eagle nest) located approximately 1.5 miles east (BE 027A) on Bartlett Island.

The intervenor testified that his organization has concerns about the use of Blue Hill Bay and its development. Particularly, their interest is in controlling the use and access, on and around, the area of Long Island on which the ANP holds a conservation easement and has recently been taken in part or whole under tax-lien by the Town of Blue Hill for non-payment of property taxes from land owner(s). Concern was expressed in particular for protection of the beaches and coves on Long Island including Dunham Cove, Fogg Cove and a beach referenced near the “Hub” for recreational use and aesthetic value. The intervenor testified that these beaches and coves have seen a dramatic increase in use over the past few years. The intervenor objects to the lease laws that allow the granting of leases incrementally with possible cumulative affects of additional leases that may be granted, instead of through a program that would determine what uses would be allowed under a comprehensive bay management plan. The intervenor testified that the proposed approximate 1000' proximity from the shore of Long Island is not adequate and that the proposed lease location would create a navigational hazard. In his opinion, as a boater, he personally follows the 100' contour in the proposed lease area in order to navigate beyond the area near to shore where he indicated large numbers of lobster buoys are located. He would also object to lighting, that he described as having rotating flashing lights having a 5-mile range.

### **Findings of Fact**

The proposed lease is located in approximately 100' depth at mean low water. It is approximately 1090' MLW east of the northern end of Long Island, and over a mile west of Bartlett Island due east. The distance measurements are based on geodetic coordinates acquired by the Department's biologist using a survey quality dGPS and chart in the biologist's report. No moorings were observed within the proposed lease or along the shore of Long Island according to the biologist's report. Based on the above and the evidence that there is ample room to access the nearest shoreline with approximately 980' of navigable water between the proposed lease and Long Island at approximate water depths ranging between 21' and 102' at

MLW, I find that the proposed lease will not unreasonably interfere with the ingress and egress of riparian owners.

The area is navigated by recreational boaters and lobster fishers tending their traps set along the island shore according to the applicant, intervenor and Department biologist. Evidence and testimony by the Department's biologist indicated that the proposed lease is located well east of the more frequent of 40' – 80' water depths used to set traps nearer to the shore. The Harbormaster testified that the passageway to the southwest and local cut-through to the southeast are not marked buoyed navigation channels. The applicant testified that the proposed site would be located on the western edge of a deep valley that runs due north and south between Long and Bartlett Islands in soft mud bottom, not preferred as lobster bottom, nor in a location that would be used for transient mooring or anchorages. According to the biologist's report there would be approximately 1090' distance at MLW and approximately 1162' distance at MLW to Long Island, and based on the chart in his report, well over a mile (>6000') due east to Bartlett Island. According to the applicant lobster fishing, dragging, recreational fishing and boating would be allowed on the open areas of the lease. Based on the testimony and evidence, I find that the lease will not unreasonably interfere with navigation in the area, especially given in the evidence, biologist's report and testimony of the applicant that there would be ample room to navigate (approximately 1000' due west and approximately 6000' due east to the nearest shorelines) around the proposed maximum 40' x 160' surface structures.

The nearest existing aquaculture lease is located due south approximately ½ mile. The site is located in an area classified by the Department as “open approved” for the harvest of shellfish. The proposed lease is characterized as having a deep soft mud bottom that is not preferred bottom to fish for lobster. According to the biologist's report and testimony, the proposed site and general area, including the 100' depths, does not have much lobster or crab activity and basically consists of barren mud. According to the applicant, intervenor and biologist the primary nearby commercial fishing is for lobsters. The applicant testified that lobster fishing, recreational fishing and boating, and dragging would be allowed on the open areas of the lease

site. The maximum surface area occupied by 1.5 rafts would be 40' – 80', although the applicant retains the option to place rafts occupying an area of 40' – 160' within the proposed 135' x 600' site, which, based on the applicant's testimony, is unlikely. The remaining acreage would be used to accommodate the moorings or remain open. Harvest activities would take place once a year using a harvesting barge (40' x 80') and by hand by the applicant when the mussels reach market size about every 2 weeks. A barge would also be hired once a year to seed the mussel rafts over a short period of time. Based on the testimony and evidence, I find that the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area given the limited use of the proposed site for lobster fishing or other fishing and credible testimony by the Department's biologist that there is ample room to circumnavigate the proposed lease.

The proposed lease site is characterized as deep, nearly barren, soft mud. The mussels proposed to be raised would be purchased from indigenous nursery sources in Maine. The use of seed mussels dragged from the wild was not requested or suggested. Bottom planting of mussels was not requested. The proposed lease has adequate water depths and other favorable characteristics to accommodate the proposed activities. The applicant testified that waste or fouling from the proposed lease would be minimal and not detrimental to the surrounding habitat. Accordingly, I find that the proposed lease activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

The seed mussels would be obtained from the site or from a nursery source located in Maine. Dragged seed mussels would not be used. Based on this evidence, I find that there is an available source of blue mussels.

According to the application and the Department biologist's report, the proposed lease would not be located within 1000' or near any public docks/facilities in the area. The nearest municipal facilities that the applicant would utilize to gain access would be in Trenton or Pretty Marsh. No public landing facility in Blue Hill would be used. The applicant testified that he would be willing to accept a condition to consult with the ANP and the Town of Blue Hill officials



regarding noise, light, debris management and no commercial use of Long Island prior to start-up. Based on the evidence, I find that the proposed lease will not unreasonably interfere with public use or enjoyment and that the site is not located within 1,000' of any municipally, state or federally owned beaches, parks, or docking facilities; satisfactory agreements with the ANP officials and Blue Hill Selectmen shall be provided to the Aquaculture Administrator prior to start-up of any aquaculture activities.

### **Conclusions of Law**

Based on the above findings, I conclude that:

1. the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. the aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. the aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. the aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. the applicant has demonstrated that there is an available source of blue mussels to be cultured for the lease site; and
6. the aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

### **Decision**

Based on the foregoing, the Commissioner grants the requested limited-purpose commercial lease of 1.87 acres (corrected) (600' by 135' ) to the applicant for a period of three (3) years from the date of this decision for the purposes of cultivating blue mussels using a 1½ to 3 raft system for suspended cultivation, as described in the record. The applicant shall pay the State of Maine rent in the amount of \$50 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000 conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

### **Conditions to be Imposed on Lease**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. fishing and navigation is allowed on the open areas of the lease;
2. all marking shall be in accordance with U.S. Coast Guard and Department of Marine Resources requirements;
3. the lease holder will clear all lobster gear that becomes tangled with his equipment when the owner identifies his equipment to the leaseholder;
4. the applicant shall reach an agreement with ANP officials on night lighting other than lighting required by the U.S. Coast Guard, noise, debris management and non-commercial access of Long Island;
5. the applicant shall reach an agreement with the Blue Hill Selectmen on the same items in 4 above; and
6. satisfactory signed agreements under conditions 4 and 5 shall be provided to the Aquaculture Administrator, in writing, prior to start-up of any aquaculture activities.

The Commissioner may commence revocation procedures if he determines that

substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

**Dated:** \_\_\_\_\_

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**George D. Lapointe (Commissioner)**  
**Department of Marine Resources**